

A T T E S T A T I O N

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COMPLAINT FOR DAMAGESU.S. DISTRICT COURT
N.D. OF ALABAMAUNITED STATES DISTRICT COURT }
NORTHERN DISTRICT OF ALABAMA }

COMES NOW, Samuel L. McClellan, the Plaintiff in the above entitled action, and states under his oath and under the penalties of perjury that the allegations contained in the foregoing complaint wherein he is the Plaintiff and the Bureau of Prisons is the Defendant, are the truth according to his best knowledge, information, and belief.

Additionally, Plaintiff asserts that he is proceeding in these matters, **pro se**, and has never filed any prior or other action of his own means and would ask this Honorable Court, to review this complaint and, if justice would be denied through the Plaintiff's inexperience or error, whereby a miscarriage of Justice would occur, appoint or recommend counsel be appointed.

IN WITNESS WHEREOF, he has signed his name hereto this 16 day of November, 2004, under penalty of perjury.

Samuel L. McClellan
Samuel L. McClellan

11/16/04
Date

MS
Notary

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT 17, 2007
BONDED THRU STEGALL NOTARY SERVICE

STATEMENT OF FACTS

COMES NOW, Samuel L. McClellan, Reg. #22898-001, proceeding in these matters before the court, in **pro se**, would have this Honorable Court know the following:

That Plaintiff has never filed any prior litigation under any statute before or since the Prison Litigation Reform Act, nor has he ever had any action dismissed for failure to state a claim upon which relief could be granted, frivolous in nature and content, nor as filed for harassment of named defendants.

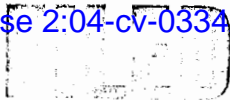
IN WITNESS WHEREOF, he has signed his name hereto this 16 day of November, 2004, under penalty of perjury.

Samuel L. McClellan
Samuel L. McClellan

11/16/04
Date

Mr. S
Notary

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT 17 2007
BONDED THRU STEGALL NOTARY SERVICE



NOV 2 2001

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CV-04-PWG-3342-S

SAMUEL L. McCLELLAN
Plaintiff

VERSUS

BUREAU OF PRISONS
Defendant

Civil Case No.: _____

Complaint for Damages
under the Freedom of
Information and Privacy
Act 5 USC §552 es quir

JURISDICTIONAL STATEMENT

1. This cause of action arises under the provisions of the Freedom of Information and Privacy Acts, whereby this Court has jurisdiction and venue in this matter by virtue of the provisions of 5 USC § 552 es quir.
2. The Plaintiff was sentenced on March 26, 2002 in the United States District Court, Northern District of Alabama and is presently residing at the federal correctional institute (FCI) Yazoo City, in Yazoo City, Mississippi.
3. On or about November 27, 2001, the United States Probation Office did prepare a Pre-Sentence Investigation Report concerning the Plaintiff which was ordered by the Court in the Northern District of Alabama, Birmingham, Alabama.
4. The Bureau of Prisons, Defendants herein, is an agency within the meaning of the term "agency" as that term is used in the Freedom of Information and Privacy Act.

COUNT 1

1. The allegations contained in paragraphs 1 through 4 of the jurisdictional statement are incorporated herein as though

fully set forth herein.

2. The Bureau of Prisons, Defendant in this cause, did maintain and use a system of records by which decisions adversely affecting Plaintiff's conditions of confinement and/or protected liberty interest can be attributed directly to inaccurate information that the Defendant, through its' employees, knew and acknowledged was incorrect, had knowledge of its expungement from the record and intentionally acted to cause harm and injury through denial of protected liberties Plaintiff otherwise would have been entitled to and received, absent the inaccurate information, to wit:
 - A. On or about April 26, 2002, Plaintiff self-surrendered to FCI Memphis in Memphis, Tennessee, after being designated to a medium level security facility by employees of the Bureau of Prisons, Defendant herein, using inaccurate information¹. (See Exhibit A)
 - B. Plaintiff, upon learning of this inaccurate information, advised his Unit Team² that he never was arrested nor charged with an "attempted murder", ever. Subsequently, Ms. Cynthia McGough, Deputy Chief U.S. Probation Officer, advised Case Manager Ms. Sharon Williams by letter, the same and offered an explanation as to how this mishaps could have happened. Thereafter, Plaintiff's counsel did likewise

1 Plaintiff is not challenging his designation through use of the mis-information, however this designation ultimately lead to the discovery of the attempted murder listed in his PSI, incorrectly and the steps Plaintiff took to have it corrected, in vain.

2 Consisting of a Unit Manager, Case Manager, and Counselor at FCI Memphis

through writing Case Manager Ms. Williams. However, upon receipt of the last(Mr. Boudreaux, counsel), Ms Williams called Plaintiff to her office and advised that he(Plaintiff)needed to tell the Probation Office and his attorney to stop writing all these letters because she didn't put the information in there(PSI)and she couldn't take it out. (See Exhibit B)

- C. On or about September 13, 2002, Plaintiff filed a motion pursuant to 28 USC §2255³ where subsequently, he attached a "Motion To Expunge", filed December 22, 2002. The Court ordered the Government to respond on December 31, 2002 and through the Assistant U.S. Attorney, Mrs Sandra J. Stewart for the Government, "No Objections" were noted in its' response filed January 9, 2003.⁴ (See Exhibit C)
- D. In early 2003, Plaintiff was advised his security level was decreasing by 2 points whereby he would be transfered to a low security level facility within the Bureau. On or about March 17, 2003, Plaintiff arrived at FCI Yazoo City, Mississippi.
- E. Following Plaintiff's Unit Team Review, held in February, together with questions and indications of other Case Managers in other Units, Plaintiff was able to ascertain with some sense of reliable knowledge that the Bureau of Prison, through its' employees, had used the 'documented behavior' of the arrest and charge for "Attempted Murder" to score

³ §2255 is still pending in this court

⁴ Copies of Exhibits "B and C" were placed in his Central File by Case Manager Ms Williams upon her receipt of same, by mail and through Plaintiff's diligence

VIOLENCE--(6)points...5-10 YRS SERIOUS, which remaining, prevented Plaintiff from being eligible for consideration and recommendation for lesser security, moreso, for his obtaining Regional approval for OUT CUSTODY, camp placement, based on Bureau of Prisons policy and guideline range of 7-9 points being low security, whereas, 6 and below is ordinarily Minimum Out Custody, absent a justifiable security concern to either society or the institution. Plaintiff spoke to Mrs. Scott, the Case Manager Coordinator, (CMC), where after discussion, wrote her on March 29, 2004. See Exhibit D, which includes affidavit of Plaintiff.

- F. After no written response from the CMC, Plaintiff filed grievances through the administrative remedy procedures, PS 1330.13, on 4/28/04, received written reply the same day, whereby he requested and received a formal complaint form on this same date also. Plaintiff submitted a further plea to Mrs Cynthia McGough, Deputy Chief US Probation Officer by writing her on 4-29-04 prior to submitting his BP-9 on 5/4/04. See Exhibit E
- G. After receiving response, dated 5/28/04, to his filed BP-9, Plaintiff filed appeal to the Southeast Regional Office because, as Staff had indicated(See affidavit of Plaintiff in exhibit D)and documents or responses to other inmates institutional responses using dismissed charges as behavior and Criminal History, if the dismissed attempted murder was not being considered, my violence score would have dropped from SERIOUS to MINOR. While awaiting my filed BP-10, Plaintiff

received a true copy of the District Court's Order deleting paragraph 29 from the Pre-Sentence Report⁵ dated May 31, 2004 but stamped filed by the Clerk on June 4, 2004. See Exhibit F.

H. Having obtained verified copy of the Court's Order, Plaintiffs sought assistance at mainline of Mrs. Scott, the CMC, where upon showing her the order, was told that the SERIOUS violence scoring of 5-10 YRS SERIOUS would change to MINOR and my Case Manager, Mr. Figueroa, would be "E-MAILED" from her to correct it. Plaintiff received Regional appeal⁶ denying his sought correction and non-use of incorrect records where he filed appeal to the Central office.⁷ See Exhibit G.

I. Plaintiff spoke to Case Manager Mr. Figueroa, where I had with him a copy of the verified Court's Order correcting by deleting paragraph 29, inaccurate information, and after showing him same, was advised that he could not make corrections to my custody and that the CMC must do this herself. Further, Case Manager advised Plaintiff to keep the Courts' order and bring it with him to Team. Following this rejection, Plaintiff again wrote the CMC on Aug. 19, 2004 and provide her with his letter(Request to Staff) on mainline and was advised by Mrs Scott(CMC)that his scoring had been corrected. Central appeal was resubmitted because staff did not provide verification (See Exhibit H)

⁵ Inmates Records Office (ISM) made verification and advised copy sent for his Central File
⁶ PS 5100.07, Chpt 8, pg 8, Table 8-5 requires (1) aggressive or intimidating behavior which is likely to cause death or serious injury and (2) finding of guilt, therefore Regional Response requiring Plaintiff provide proof is unfounded and must be based on attempted murder charge
⁷ Staff provide incorrect form, rejected and resubmitted on 8-24-04 as dated.

- J. Plaintiff's Unit Team review was held in mid August, on or about the 19th, where Case Manager Mr. Figueroa advised his scoring had been adjusted from SERIOUS to MINOR and as a result, his Security Points was below the level for consideration for Out custody, camp placement(Minimum Security)⁸ therefore the Unit Team would recommend for Minimum security at any Camp population limits would allow. Plaintiff made request for copy of his BP-15(Male Custody Classification Form)⁹ and was advised to see him(Mr. Figueroa) in a couple of days. On or about September 16 , 2004, Plaintiff was advised Regional Designators had denied his transfer recommendation. Upon advisement, Plaintiff requested copy of 409 transfer recommendation and denial reasons, in writing and was provide accordingly. On 10-29-04, Unit Counselor Mrs Stansbury provide copy of the Central office BP-11 response. (See exhibit I)
- K. Immediately after reviewing the 409 transfer as prepared by Case Manager Mr. Figueroa I requested an explanation as to "WHY" would he included material He knew was expunged and specifically, WHY would he indicate the Probation Officer advised I was charged but due to mistaken identity, all charges were dismiss? My Case Manager advised me it did not matter about the expungement, as long as it was in the PSI he had to write it up. Further, he advised that it was his thoughts from the Probation letter that I was charged. Lastly, I asked WHY would he indicate I had

⁸ 6 points and below, is a requirement for Out custody, Minimum security. I had "1".

⁹ Plaintiff was provide his copy on 8-31-04, however, correction was made prior as indicate by the FORM DATE of 08-24-04 6.

a SERIOUS violence scoring of 5-10 YRS when he knew all that changed prior to his submission of the 409 transfer recommendations. All in all, Case Manager Mr. Figueroa conveyed the impression that he was completely satisfied with the outcome of his malicious actions, clearly intentionally done. Further questions as to how could he use material that he knowingly was aware had been expunged was again responded to saying what's in the PSI is what I put in the report, period!!!. See Exhibit J

3. The Plaintiff brings this civil action for the purpose of obtaining Injunctive Relief and compensation for damages, (and other available relief) from Defendant, the Bureau of Prisons, for violations of provisions under Title 5 U.S.C. § 552 es quir by and through their (1) failure to maintain accurate records, (2) adverse agency actions resulting from use of the inaccurate records, and (3) actions of the agency was willful and intentional to the point of producing the desired resulting adverse decision against Plaintiff.

C O N C L U S I O N

To show damages, a Plaintiff must prove, in addition to the three (3) requirements stated above, "actual damages" even to qualify for the minimum statutory award of \$1000. The evidence is (1) clear and convincing, (2) unrefutable, and (3) over-whelming. First, the agency failed to maintain their records accurately in regards to using "the attempted murder charge" and "the correct classification scoring" when associating the two together and separately. Prior to transfer to FCI Yazoo City, within the Bureau

of Prisons, the Deputy Chief U.S. Probation Officer wrote to employees of the Defendant and 'clearly' advised that not only was there an error at paragraph 29, but moreover, Plaintiff **was not charged** with any crime, specifically the attempted murder, clearly aware of the policy of the Bureau of Prisons in treating dismissed charges as conduct or behavior in an individual's criminal history. Plaintiff submits, additionally, supporting evidence by affidavit of inmate William Earl Pollack, whom after being designated to Minimum Security, was essentially hog-tied and transferred to FCI Yazoo City after Staff determined the dismissed charges in his PSI warranted "higher security". This inmate has convictions of (1) misdemeanor marijuana possession and the (2) drug conviction he is serving time on at present, ONLY. See Exhibit K . Just as in inmate Pollack case, Plaintiff was denied due to 'Criminal History' however, the only submission of criminal history included in the 409 transfer is the dismissed attempted murder charge. See Exhibit I , (Management Past/Current Concerns) Notwithstanding that Defendant was aware that Plaintiff was never charged, in this document he's labeled as "charged and dismissed". Defendant had clear knowledge that this inaccurate information was **EXPUNGED BY THE COURT** and was **"VERIFIED"** by one of its' own staff, yet three (3) months later treated the Courts Order like toilet paper. Willful or intentional? You bet!! See Exhibit F. Plaintiff has submitted documents verifying that the Record Office personnel notified Case Manager Mr. Figueroa as early as 4-28-04. See Exhibit E . The second part of the inaccurate records deals with the classifica-

8.

tion scoring used by the Bureau of Prisons, through PS 5100.07 and as indicated in exhibit E, showing chapter 8, page 8, table 8-5. From the beginning, Plaintiff alleged in his administrative remedies that...based on the Bureau's policy, nothing in the PSI account of the '94 Assault and Battery' conviction detailed information to score it SERIOUS. In the same manner that policy requires a finding of guilt, policy also states clearly "aggressive or intimidating behavior that **is** likely to cause serious bodily injury or death" must be evident to score SERIOUS. Instead, as indicated by several of Defendant's on employees, Case Managers and others, the conduct and behavior of the dismissed attempted murder was taken into account to award the higher scoring of SERIOUS. While maintaining an inaccurate scoring may seem "trivial" to a lay person, scoring, when taken together with other factors is the cornerstone of where an incarcerated person lives. It is in no way Plaintiff's belief that he is "entitled" to serve his sentence where he desires, but it is Plaintiff belief that his constitutional rights protects him from conditions of confinement which may be detrimental to his safety. Maintaining records inaccurately, in violation of federal statues, where Plaintiff's incarceration is the product of housing with inmates requiring greater security because of violence in their criminal history, including murder, rape, robbery, manslaughter, ect..., places Plaintiff's life at jeopardy, uselessly and unjustly. At just about 5 feet tall, it's mentally exhausting and challenging to survive daily with person whom have done all of those things, placed at jeopardy...because of inaccurate records.

The reason for denial cites two (2) factors, criminal history and (2) time remaining. Plaintiff addresses the later, having presented evidence to dispute the first. It's a very simple fact that inmates are routinely accepted for minimum security with "anything less than 10 years" as greater than 10 years remaining on ones sentence is a public safety factor, requiring waiver. Absent the inaccurate submission of SERIOUS violence and dismissed attempted murder(that didn't happen), Plaintiff met all requirements and would have been approved with flying colors. Submitted is two (2) affidavits of similar charged inmates that are among **thousands** that are placed in minimum security facilities with more time remaining than Plaintiff. In the case of inmate Franc Barriera-Diaz, his records indicate he was charged with having over "100 Kilos" of powdered cocaine where upon arrest, authorities found a fire arm in a brief case and another in the glove compartment. Additionally, while incarcerated, in '96 he recieved a dirty urine test and was charged with violating bureau policy. His time remaining shows **release past** my release, yet approved. Only through lack of the inaccurate records!!! See exhibit L With the correct account of Plaintiff criminal history being MINOR, the time remaining would not have been a factor, period.

It's clear that the Plaintiff has met the burden, in this civil action against Defendant, the Bureau of Prisons, through their willful and intentional use of inaccurate records which beyond any doubt, had an adverse effect on deciding Plaintiffs custody and security needs. As such, Plaintiff seeks damages 10.

inaccordance with those established under provisions of Title 5 U.S.C. § 552 es quir, punitive award for it's malious and intentional disregard of the Courts Order and other notices in forwarning, where the result was a desired product of thier actions. Plaintiff ask this Honorable Court for immediate Injunctive Relief whereby Defendants act to correct their knowingly wrong deeds by using the corrected records and resubmitting Plaintiff for Minimum security, as just and correct. Plaintiff asks further of this Court for any and all appropriate relief he may be entitle to as determined by the Court. Lastly, Plaintiff respectfully asks this Honorable Court to protect him against any present or future retaliation for bring this action by Defendant or any of its employees.

WHEREFORE, Plaintiff **prays** for judgement against Defendant, the Bureau of Prisons, and further ask for all cost of these proceedings, including attorney fees as afforded under statues.

Respectfully submitted,


Samuel L. McClellan

PROOF OF EXHAUSTION

Plaintiff, under the Prison Litigation Reform Act, hereinafter, PLRA, is required to properly exhaust all available remedies prior to seeking jurisdiction in federal court. Included in exhibits is proof of exhaustion, thereby establishing jurisdiction.

Accordingly, Plaintiff respectfully submits he has exhausted administrative remedies in accordance with requirements of Congress through the PLRA.

Respectfully submitted,



Samuel L. McClellan

BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) <i>Mr. Figueroa, ABU Case Manager</i>	DATE: <i>11/19/04</i>
FROM: <i>Samuel McCallum</i>	REGISTER NO.: <i>22898-001</i>
WORK ASSIGNMENT: <i>Unit Edoely</i>	UNIT: <i>2B4</i>

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

SIR,

Previously I made written request on 6-24-04 to review my Central File, however, at this time I still have not been allowed to. I am making this second request to allow me to view my Central File and obtain copies of documents I request.

While reviewing, I do need a copy of my last Program review (transcript) Aug 2004 and may require other copies at or during my examination of my file.

Please honor my request in accordance with BOP policy!

SBM

Samuel McCallum

(Do not write below this line)

DISPOSITION:

Signature Staff Member

Date


Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94



Printed on Recycled Paper

EXHIBIT A

600.00 * SECURITY/DESIGNATION DATA * 07-22-2002
PAGE 001 OF 001 * 19:12:37
REGNO: 22898-001 NAME: MCCLELLAN, SAMUEL LEE ORG: 
RC/SEX/AGE: B/M/31 FORM D/T: 04-17-2002/1325 RES: BIRMINGHAM, AL 35217
OFFN/CHG...: DISTRIBUTION IN EXCESS 50 GRAMS MIXTURE & SUBSTANCE CONTAINING
DETECTABLE AMOUNT OF COCAINE; 121 MOS; 60 MOS (CR01C0283S)
CUSTODY...: IN BIL: CR HX PT: 3 CAR:
CITIZENSHIP: UNITED STATES OF AMERICA PUB SAFETY: NONE
CIM CONSID: USM: N/AL-HUN
JUDGE.....: CLEMON REC FACI: REC PROG: FRP
DETAINDER...: NONE SEVERITY: MODERATE ✓ MOS REL.: 102
PRIOR.....: SERIOUS ✓ ESCAPES..: NONE VIOLENCE: 5-10 YRS SERIOUS ✓
PRECOMMT...: VOL SURR ✓ V/S DATE: 04-26-2002 V/S LOC.: USMS/INST
OMDT REF...: YES SEC TOT.: 9 SCORED LEV: MEDIUM
CCM RMKS...: OFF: 179.4 GRAMS COC BASE. P/R: ASSAULT AND BATTERY'94. CRIM
HX: VIOL ST. F/A ACT/FINED & PSSN COCAINE/PROB, CRIM MISCHIEF
/FINED, ASSULT & BAT/NOL PROS & ATTMPTD MURDER/DISMISSED.
OMDT: MENTAL ROD IN LEFT LEG W/GD MNTL HLTH.S/A=DHY.EKT
DESIG: MEMPHIS FCI SER KSB 04-18-2002 RSN: LEVEL MSL:
MGTV/MVED.:
DESIG RMKS: CLEARED BY MED DESIG

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

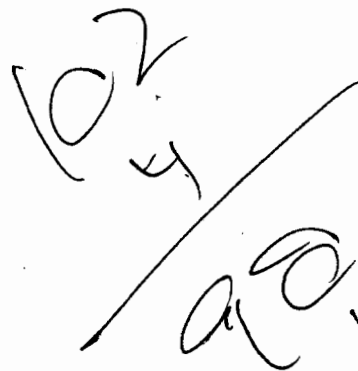


EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
PROBATION OFFICE

September 17, 2002

OSCAR J. STEPHENSON, JR.
CHIEF PROBATION OFFICER
HUGO L. BLACK
UNITED STATES COURTHOUSE
1729 FIFTH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
COM. (205) 278-2100
FAX (205) 278-2125

Ms. Sharon Williams
Case Manager
1101 John A. Dennie Road
Memphis, TN 38134

RE: Samuel McClellan
#22898-001
Correction to presentence report

Dear Ms. Williams:

It was brought to my attention that this inmate was challenging the information at paragraph 29 of the presentence report dated November 27, 2001. Although the defendant and his lawyer did not object to this information at the sentencing hearing and although I recognize that we cannot make changes to the presentence report at this point in time, I considered the issue serious enough to look into it.

I obtained a copy of the court record which shows that the individual named in this case was a "Tommy L. McClellan" with a date of birth of 6/18/63. Tommy McClellan was a white male standing 5' 8" tall and weighing 155 pounds. Clearly, this does not match the identifiers for Inmate Samuel McClellan.

I have attempted to learn how the entry appeared on Samuel McClellan's NCIC report which led to its inclusion in the presentence report. It appears that a number in the court record for DC-92-00689-00 was transposed which somehow led to its appearing on the NCIC report.

In any event, I am satisfied that your inmate Samuel McClellan was not charged with attempted murder as is reported at paragraph 29 of his presentence report. I regret that this mistake occurred and that it was not challenged in a timely manner so that the court could have corrected the presentence report.

Please feel free to contact me at 205-278-2111 if you have any questions or need to discuss this matter further.

Yours truly,

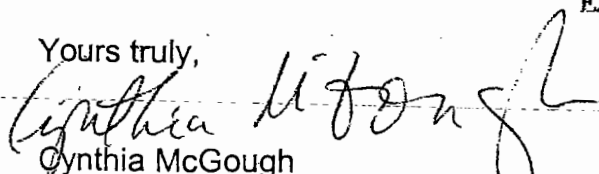

Cynthia McGough
Deputy Chief U. S. Probation Officer

EXHIBIT " A "

copy to: Samuel McClellan

25

1-13-99 Criminal Mischief; 5-3-99: Pled Guilty. \$276 4A1.1(c)
 Age 28 Birmingham Fine and Costs
 Municipal Court;
 Birmingham,
 Alabama;
 Case # 007137941

1

The defendant reported that he waived attorney representation. McClellan said that he and his girlfriend were having an argument and that his girlfriend threw a tire iron into the yard as he left her house. He stated that he picked it up and threw it back toward the doorway of the house. He said that his girlfriend shut the front door at that moment and the tire iron broke the glass in the front door.

26. The defendant has numerous arrests for traffic infractions in which fines were paid or were otherwise uncountable for guidclinc purposes.

Criminal History Computations

27. The total of the criminal history points is three. According to the sentencing table at U.S.S.G., Chapter 5, Part A, three criminal history points establish a criminal history category of II.

II

Other Arrest(s)

Date of Arrest	Charge	Court or Agency	Disposition
28. 1-25-92 Age 21	Assault and Battery	Birmingham Municipal Court; Birmingham, Alabama; Case # 004652051	7-28-92: Nol Prossed
29. 1-27-92 Age 21	Attempted Murder	Jefferson County District Court; Birmingham, Alabama; Case # DC 92-0689	3-18-92: Dismissed

The defendant was represented by counsel, Erskine R. Mathis.

8

1992
1970
22
LEE
Teller
age

1982
1963 HEWAS
BORN
29
Tommy LEE McClellan
age

← They change his age to make it fit my age

LAW OFFICES OF
J. SCOTT BOUDREAUX
604 38TH STREET SOUTH
BIRMINGHAM, ALABAMA 35222
—
TELEPHONE (205) 591-6767
FAX (205) 591-6765

J. SCOTT BOUDREAUX
SHEILA A. WEIL

December 16, 2002

Ms. Sharon Williams
Case Manager
1101 John A. Dennie Road
Memphis, TN 38134

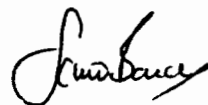
In Re: Samuel Lee McClellan
Number: 22898-001
Correction to Pre-Sentence Report

Dear Ms. Williams:

I represented Samuel Lee McClellan in the offense that forms the basis for his incarceration with you. He has forwarded me a letter from Ms. Cynthia McGough, Deputy Chief U.S. Probation Officer, concerning an error in his pre-sentence report. A copy of that letter is attached for your reference.

I talked with Ms. McGough about how to proceed at this point. She suggests that I write you a letter and ask you if any reclassification has occurred as a result of this letter. It is possible that I can get Judge Clemon to write you a letter asking you to disregard that erroneous arrest which was inadvertently included in his pre-sentence report if necessary. If there is anything else that you would like for me to do, please let me know and I will be glad to try to do it. Thank you for your attention to this matter and I look forward to hearing from you soon.

Sincerely,



J. Scott Boudreaux

JSB/gwd
Enclosure

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mr. J. Williams	DATE: Sept. 26, 2002
FROM: Samuel L. McClellan	REGISTER NO.: 22898-001
WORK ASSIGNMENT: LANDSCAPE	UNIT: Beale B

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

I would like for you to look into a case that was add to my P&I that was not me. My case manager said she cannot do anything about it. I have a paper from the court clerk saying that it isn't me, but she my case manager said that is all that she can do. Thanks

(Do not write below this line)

DISPOSITION:

I concur with this report and you should not be held responsible for something you did not do.
 JMC
 CMC

Signature Staff Member J. Williams	Date 10/3/02
---------------------------------------	-----------------

Record Copy - File; Copy - Inmate
 (This form may be replicated via WP)

This form replaces BP-148.070 dated Jan 94 and BP-S148.070 APR 94

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED
03 JAN -9 PM 2:04
U.S. DISTRICT COURT
N.D. OF ALABAMA

SAMUEL LEE McCLELLAN,)	
)	
Movant,)	
)	
vs.)	CASE NO. CV-02-C-8051-S
)	(CR-01-C-0283-S)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**GOVERNMENT'S RESPONSE TO COURT'S ORDER
TO RESPOND TO MOTION TO EXPUNGE**

COMES NOW the United States of America (the Government), the Respondent in this case, and, in compliance with this Court's order of December 31, 2002 directing the Government to respond to Movant Samuel Lee McClellan's Motion To Expunge, responds as follows:

Movant Samuel Lee McClellan filed a "Motion To Expunge" in connection with his Motion Under § 2255 to Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody. In the motion to expunge, he states that an arrest for attempted murder referred to in paragraph 29 of his presentence investigation report was not an arrest involving him. In support of his motion, he attaches a September 17, 2002 letter from Deputy Chief U. S. Probation Officer Cynthia McGough to McClellan's case manager at the prison. In that letter, Ms. McGough states that, when it was brought to her attention that McClellan was challenging the information concerning the previous arrest for attempted murder, she obtained a copy of the court record for that arrest and determined that the person involved in that arrest clearly could not have been Samuel McClellan. Undersigned counsel has verified with Ms. McGough, this date, that she did,

in fact, obtain the file for the prior arrest referred to in paragraph 29 of McClellan's presentence report and that she did determine that the person involved in that arrest – a white male, 5' 8" tall and weighing 155 pounds – could not, in fact, have been Samuel Lee McClellan, the movant in this case.

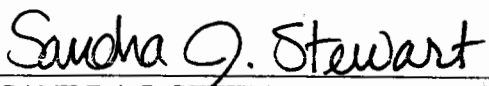
Based on the Government's confirmation of the information contained in McClellan's motion to expunge, the Government has no objection to any expungement of the information contained in paragraph 29 of McClellan's presentence report prepared in connection with the underlying offenses in this case. The Government would point out that, in sentencing McClellan, the Court in no way used the information in paragraph 29 of the presentence report in determining McClellan's sentence. In sentencing McClellan, the Court determined that his offense level was 31 and his criminal history category was II, resulting in a sentencing range of from 121 to 151 months. The criminal history category was calculated based on McClellan's three prior convictions in Jefferson County for an assault and battery, possession of cocaine, and criminal mischief. The criminal history category determination in no way took into account the fact that McClellan had previously been arrested for attempted murder. Moreover, McClellan was sentenced at the very lowest end of the guidelines range for his offense – 121 months. Therefore, it appears that the prior attempted murder arrest had no affect on the sentence whatsoever. McClellan does not appear to have been penalized or denied a benefit based on this alleged previous arrest. Moreover, McClellan does not allege any such penalty or denial of any benefit. Therefore, no sentencing consequences result from an expungement.

Although McClellan's presentence report was filed under seal and is not a public record, the inclusion of the arrest in the report apparently can have deleterious effects on him, at least

during his incarceration, if not thereafter. Therefore, while not conceding (but not objecting either) the fact that a § 2255 motion is the proper method to bring this type of matter to the Court's attention, the Government does not object to McClellan's motion to expunge.

Respectfully submitted this 9th day of January, 2003.

ALICE H. MARTIN
United States Attorney

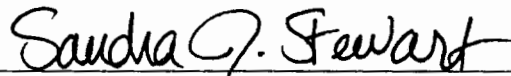


SANDRA J. STEWART
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of January, 2003, I served a copy of the foregoing response on the pro se movant by mailing a copy of the same to him, United States Mail, postage prepaid, at the following address:

Samuel Lee McClellan
Prisoner Reg. No. 22898-001
FCI Memphis
P. O. Box 34550
Memphis, TN 38184-0550



SANDRA J. STEWART
Assistant United States Attorney

ADDRESS OF COUNSEL:

United States Attorney's Office
1801 Fourth Avenue, North
Birmingham, AL 35203
(205) 244-2001

EXHIBIT D

A F F I D A V I T

I, Samuel L. McClellan, Reg. #22898-001, having been duly sworn, make the following statements from personal knowledge as being true and correct, under penalty of perjury, to wit:

1. After being made aware of the Bureau of Prisons practices, through its' employees and policy, of treating "dismissed" charges as Criminal History in which its inclusion would possibly be used to determine History of Violence, thus classification scoring and higher security levels assigned as a result, I sought council of FCI Yazoo City Staff.
2. Originally, I first spoke to Case Manager Mr. Curry, 2AU whom had been acting as "coaching"(for lack of a better reference)to my Case Manager, Mr. Figueroa whom was believed to be new at his job title, where I asked about the scoring of SERIOUS for violence that my PSI held NO DETAILS to justify the requirements as outlined in Chapter 8, pg 8, under Table 8-5 as used for an conviction of Assault and Battery in 1994 and was told that the only way to get my points corrected was to file an administrative remedy so that the Dismissed Attempted Murder would not be used as documentation of violent behavior thus incorrect scoring.
3. While at the recreation yard on another day, I spoke to 1BL Case Manager Mr. Randle about the inaccurate information being listed in my PSI and the ramifications it had on my classification of SERIOUS violence when the charge was shown as DISMISSED, and was told it still counted AND to file admin. remedies to remove it.

4. On another day I spoke to 3 Unit Case Manager Mr. Bailey whom advised me that although the Attempted Murder is listed in the PSI as DISMISSED, the Bureau of Prisons Staff, including Regional Designators treat charged and dismissed offenses as if authorities didn't have enough evidence to convict but that you actually did the crime. He further suggested I file administrative remedies to remove it altogether to prevent any adverse decisions being made because of it.
5. I also spoke to Security Leutenant Mr. Pearsaw whom advised that the BOP would use this mis-information even if the charges were shown as dismissed, from his personal knowledge as a member of Unit Team as a previously titled Unit Counselor and suggested I should file administrative remedies to remove this altogether.
6. After writing Mrs Scott, the Case Manager Coordinator and not receiving any response(in reply)in written answer, I attempted to speak to an Assistant Warden on mainline and was directed to the Assistant CMC(name unknown)where after discussing my situation with him was advised the Unit Case Manager had documents he could file to clear any mis-information or inaccurate records if I filed a grievance, which I should do.

Executed this 18 day of November 2004, under penalty of perjury.

11/18/04
Date

2.

Samuel L. McClellan
Samuel L. McClellan

Notary
Notary
MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT 17, 2007
BONDED THRU STEGALL NOTARY SERVICE

YAZB7 606.00 * MALE CUSTODY CLASSIFICATION FORM * 02-26-2004
PAGE 001 OF 001 15:34:23

(A) IDENTIFYING DATA

REG NO.: 22898-001 FORM DATE: 02-26-2004 ORG: YAZ
NAME: MCCLELLAN, SAMUEL LEE CR HX PT: 3
MGTV: NONE
PUB SFTY: NONE MVED:

(B) BASE SCORING

DETAINER: (0) NONE SEVERITY: (3) MODERATE
MOS REL.: 83 PRIOR: (3) SERIOUS
ESCAPES: (0) NONE VIOLENCE: (6) 5-10 YRS SERIOUS
PRECOMMT: (3) VOL SURR

(C) CUSTODY SCORING

TIME SERVED: (3) 0-25% DRUG/ALC ABUSE: (2) PAST 5 YRS
MENTAL STABILITY: (4) FAVORABLE TYPE DISCIP RPT: (5) NONE
FREQ DISCIP RPT: (3) NONE RESPONSIBILITY: (4) GOOD
FAMILY/COMMUN: (4) GOOD

--- LEVEL AND CUSTODY SUMMARY ---

BASE CUST	VARIANCE	SEC TOTAL	SCORED	LEV MGMT	SEC LEVEL	CUSTODY	CONSIDER
+9	+25	-2	+7	LOW	N/A	IN	DECREASE

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

March 29, 2004

Mrs. Angelia Scott, CMC
Case Manager Coordinator
FCI Yazoo City
Yazoo City, MS 39194

RE: Inaccurate records maintained
and used by the BOP

Dear Mrs Scott:

I am writing you because of concerns, inaccurate records being used against me, which I am hoping you will address. Of course I have first made my Unit Team aware of the mishaps and it appears that no one wants to do anything about it. I have never used the administrative remedy program and hope that this letter will alleviate the need to do so.

Upon entry into the Bureau of Prisons I self-surrendered at FCI Memphis whereafter I was given my initial team review and a copy of the Security/Designation Data sheet attached with highlighted emphasis on incorrect criminal history, ie. Attempted Murder/Dismissed. At that time we were allowed to have in our possession a copy of the PSI and I noted the arrest incorrectly attributed to me. I sought help of inmates at the law library there and filed a Motion to Expunge whereby the District Court issued an ORDER for the Government to respond. Since it was serious criminal history being attributed to me and I did not have any knowledge of or part in any way with either being arrested or charged with Attempted Murder, following response, a copy of both the Governments response and letter to my Case Manager Mrs. Williams was hand given to my Unit Team to insure that this would not affect me, in any way. (See attached)


Prior to my Unit Team meeting here at FCI Yazoo City, 2BU, I again showed my Unit Team these documents and upon review noted that my BP-15 indicates under (B) Base Scoring...Violence...(6) points 5-10 yrs Serious. At my Team Meeting last month I again addressed this error as my complete record does not justify a "serious (6)points" severity. Mr. Fulcher noted that my record shows a assault and battery with details in my PSI of the incident in which I plead guilty and paid a fine of \$350, however as read and correctly stated the incident had 'No Violence'. My childrens' mother threw an object at me and I threw it back and broke a window. NO ONE was touched in any way. Which brings me to the point of this letter, if there is not likely to cause serious bodily injury, eg. simple assault..etc. then my points should have been determined to be MINOR, 5-10 and (2) points instead of the "6 points" shown. My Unit Team advised me it appears it is because of the "Attempted Murder" listing being the most serious and used to determine severity.

Mrs Scott, I have seven (7) children that I am doing all asked of me to further my referral to a closer home location and "OUT CUSTODY" which I meet all of the requirements except that my record incorrectly shows serious violence for a matter that upon your review, like that of my Unit Team, would agree is unwarranted and in error. As such and in following those guidelines established under the Privacy Act, I believe my asking to have my records correctly available for review, is in my rights and I ask that you address my concerns herein to enable me to be considered for lower security.

Please allow me to offer my thanks to you for your assistance in these matters. If there is anything else I need to provide I will be happy to do so upon your advising me. On a lighter note, I point out that I stand barely 5 foot and if anything, I'm trying to avoid violence and not be a victim myself. That's why, and my record substantiate that I have no serious violence anywhere in my history.

Again, thank you in advance for your help.

Sincerely,


Samuel McClellan
Reg. # 22898-001

CC: sm
records

•

EXHIBIT E

04-28-04

MCCLELLAN, Samuel
2BU

I spoke with Mr. Figueroa today about that mistaken identity charge. He said that it has been cleared up and a copy is in your Central File. He said your scoring will change in December at your next review.

If there is something else, come to open house Monday - Thursdays 11-12:00.

A handwritten signature in black ink, appearing to be 'KC' with a stylized flourish.

K. Chatman, Ass't ISM

Federal Correctional Institution, Yazoo City, Mississippi
Request for Administrative Remedy
Attempt at Informal Resolution

Inmate Name: SAMUEL MCCLELLANRegister No.: 22898-001Unit: 2B-Upper**TO BE COMPLETED BY INMATE:**

1. Briefly state your complaint. Include all details and facts which support your request and the date on which the complaint occurred.
 I am filing an informal resolution following several attempts to rectify my concerns.
 Upon review of my BP-15, my BASE SCORING incorrectly attributes me with SERIOUS VIOLENCE (6) points 5-10 yrs. This determination is based on the Bureau of Prisons using an inaccurate and incorrect arrest for ATTEMPTED MURDER, shown in my PSI at paragraph 29, page 8. Prior to my transfer here, I self surrendered at FCI Memphis and
2. What actions are you requesting to resolve your complaint?

TO BE COMPLETED BY STAFF:

3. Indicate below the efforts made to resolve the matter. Be specific but brief. Include names of staff contacted to attempt resolution. (Use back of this form if necessary.)

The attempted murder charge is not being scored. The Assault and Battery from 1994 is being considered as serious violence. Your custody will be re-scored at your next team meeting. Your history of violence score should drop to 10-15 years serious. In addition your time served may be reduced also on your custody Classification Form.

Correctional Counselor/Date

Inmate Signature/Date

Unit Manager Review/Date

NOTE: Attach any pertinent documentation related to the inmate's complaint.

	BP-8 Issued To Inmate	BP-8 Returned To Counselor	BP-9 Issued To Inmate	BP-9 Returned to Counselor	BP-9 Delivered to Admin. Remedy Coord.
Date:	4-21-04	4-28-04	4-28-04	RLH Q	5-5-04
Counselor:	RLH	RLH	RLH	5-4-04	RLH

several documents were supplied to my Case Manager and thus my Central File. Those documents include, (1) letter dated Sept. 17, 2002 from the Deputy Chief U.S. Probation Officer Mrs Cynthia McGough, (2) letter dated December 16, 2002 from attorney Mr. J. Scott Boudreaux, (3) copy of the Government's response, STAMPED FILED dated January 9, 2003, by the U.S. Attorney Mrs. Sandra J. Stewart. In each case, those documents advise the Bureau of Prison, through appropriate Staff, that a serious error occurred with the previously mentioned charge, ATTEMPTED MURDER, being incorrectly placed in my PSI. Following my last Unit Team meeting on or about Feb. 26, 2004 I asked again that my records be corrected, in other words, the serious violence be removed based on my PSI, not supporting any conduct resulting in a finding of guilt. Nothing has been done.

P.S. 5100.07, Chapter 8, Table 8-5, indicates "Assault" as being a minor offensive category. While my PSI states I was convicted of Assault and Battery, there is nothing detailing SERIOUS VIOLENCE which would likely result in serious bodily harm or death. My PSI shows a conviction of CRIMINAL MISCHIEF in which no physical contact occurred.

Because of my concerns, based on the PSI and the Bureau's assignment of SERIOUS VIOLENCE, I first discussed this matter with my Unit Team who advised me that it appears that the conduct of the Attempted Murder was used to determine the Serious Violence Category. I also wrote to Mrs Scott, FCI Yazoo City's CMC on March 29, 2004 and have not received any response to my correspondence, prompting this informal complaint. I ask that my concerns be addressed and the following relief be granted, in accordance with policy aforementioned and Title 5 U.S.C. §552e(a) of the Privacy Act, making agencies liable for maintain and using incorrect information.

RELIEF REQUESTED

- (1) Correction of my PSI, through the removal of the Serious Violence scoring of (6) points and the correct scoring of Minor (2) points
- (2) Notification in writing of correction
- (3) Upon correction, I be scheduled for an early team review as Bureau Policy permits.

Respectfully,


 Samuel McClellan

Adult Criminal Conviction(s)

	Date of Arrest; Age	Conviction/Court	Date Sentence Imposed/Disposed	Guideline	Pnt
22.	6-22-89 Age 18	Violation State Firearms Act; Birmingham Municipal Court; Birmingham, Alabama; Case # 003671031	4-16-90: Pled Guilty. \$144 Fine and Costs	4A1.2(e)	0
(23)	7-25-94 Age 23	Assault and Battery; Birmingham Municipal Court; Birmingham, Alabama; Case # 005549731	8-5-94: Guilty. 32 Days Custody (2 Days Served, 30 Suspended), 2 Years Probation, \$406 Fine and Costs	4A1.1(c)	1

The defendant waived attorney representation.

(24)	3-26-98 Age 27	Possession of Cocaine; Jefferson County Circuit Court; Birmingham, Alabama; Case # CC 98-6963	3-4-99: Pled Guilty. 1 Year and 1 Day Custody (Suspended), 2 Years Probation, Court Costs; 4-18-00: Probation Terminated; 5-19-00: Costs Paid in Full	4A1.1(c) <i>no waiver required</i> <i>if P</i>	1
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The defendant was represented by counsel, Kenneth J. Gomany.

April 24, 2004

Mrs. Cynthia McGough
Deputy Chief U.S. Probation Officer
United States Courthouse
1729 Fifth Avenue North
Birmingham, Alabama 35203

RE: Incorrect information in
my PSI

Dear Mrs McGough:

Previously, on September 17, 2002 you wrote the Bureau of Prisons through Ms. Sharon Williams concerning incorrect information shown in my PSI. The necessity of this letter, now allows me the opportunity to thank you for taking the time to address this serious matter which is affecting me adversely.

Since March of 2003 I have been assigned to FCI Yazoo City, Mississippi in Unit 2, upper. Prior to review of my records, namely the PSI, I went to both my Unit Manager and Case Manager to insure that they had copy of your letter in my Central file and would not use this information to hinder me from lesser security transfers, program participations, etc. At my last Unit Team review, I noted that my security points were disproportionate with the Bureau of Prisons Program Statement 5100.07, Security & Classification Manuel and upon inquiring about these discrepancies I was told, that's right,...the Attempted Murder is the bases of my being applied "serious violence" and (6)points and for priors (3)points for serious, again..., the Attempted Murder.

Mrs. McGough, I don't want to make this letter a sob story, however I do feel inclined to say that I have seven (7)children in the Birmingham area that would like to see, among other things, me being closer home to visit as well as a lesser security environment. Unfortunately, I am denied based on the incorrect information listed in my PSI that for the life of me I cannot figure out not only how this got put on my record, but HOW did this guys "age" get lowered to fit my correct age. I have a clear conduct record in the BOP and have never filed any types of complaints before now however, I recently proceeded with my administrative remedies based on Privacy Act violations. It's not right nor fair for me to be denied based on information "known to be incorrect".

Through this correspondence Mrs. McGough, I am asking if there is any possible way to allow for a "new and corrected" PSI to be prepared and substituted to correct this error? I have attached a copy of your previous letter for reference and efficiency in adequately addressing my concerns. I would sincerely appreciate some input as to how, why, and what I can do to correct this matter.

Of course, I am appreciative of your time and efforts towards a matter that should have been addressed by my attorney at the appropriate time. Should there be any other information that I

need supply or documents to sign or file, please so advise me and I will comply. Unfortunately, Easter has come and gone however, if appropriate, I extend my sincere best wishes for a blessed and happy Mother's Day to you.

Sincerely,

Samuel McClellan 22898-001
Samuel McClellan

CC: sm

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: MCCLELLAN, SAMUEL 22898-001 2B-UPPER YAZOO CITY
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST

I am filing a formal complaint in accordance with Bureau policy, through this BP-9. Attached find copy of my attempts at informal resolution with response.

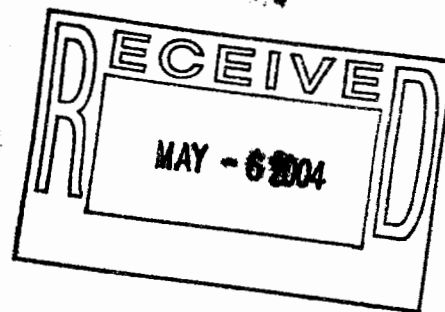
My response to my complaint does not follow guidelines established under Bureau of Prisons policy statement, PS 5100.07. I am addressing two areas shown on my BP-15 that are based on incorrect information. First, under (B) BASE SCORING, PRIOR shows (3) SERIOUS and VIOLENCE (6) 5-10 YRS SERIOUS both scores being based on information in my PSI. I have NO SERIOUS priors nowhere in my record and based on that same PSI listing priors as (1)criminal mischief and (2)assault and battery there is nothing to indicate any intent to commit any violence of a serious nature on any person. My response indicates that the Assault and Battery of 1994 is being considered as SERIOUS however there is nothing to indicate or support a determination of serious and subsequently...(6) points for SERIOUS VIOLENCE. Assault and Battery is shown on page 8 of Chapter 8 in Table 8-5 and support a finding of MINOR 5-10 (3)POINTS ONLY. My PSI states the charge ONLY and no behavior to indicate or support behavior which is likely to cause serious bodily harm or death, therefore the

May 3, 2004 (See attached page)
DATE

Samuel McClellan 22898-001
SIGNATURE OF REQUESTER

Part B- RESPONSE

See attached



DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 333360-F1

Part C- RECEIPT

CASE NUMBER: _____

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)



listing of SERIOUS priors and SERIOUS violence is based on an assumption ONLY. This assumption is complicated by the showing of an ATTEMPTED MURDER that the Bureau has documented records to indicate this was not me. The only possible area of making such an incorrect determination to score me as SERIOUS on PRIORS AND VIOLENCE is using the attempted murder as a behavior I had nothing to do with. At my last Unit Team meeting I again asked that my record be corrected based on the PSI showing no serious priors or behavior to indicate SERIOUS VIOLENCE through a finding of guilt. Nothing has been done.

SECOND, I address (C) CUSTODY SCORING..DRUG/ALC ABUSE (2) PAST 5 YRS. This is incorrectly scored based on the PSI itself which shows that I did not drink alcohol in the past 5 years and have not used drugs in my life. P.S. 5100.07, Chapter 9 page 12 Table 9-9 indicates based on my PSI, my score should have been (4) NEVER OR OCCASIONAL LEGAL USE ONLY as I did not drink alcohol in the period indicated and have only occasionally use such as at a wedding for a toast to the wedding couple. I do not drink as indicated in my Custody Scoring.

I share my concerns, that the BOP is looking at someone's error which lists an Attempted Murder on my PSI which I never had any doing whatsoever, documents submitted to support this yet my Base and Custody scoring is indicative of the most SERIOUS BEHAVIOR possible while my priors and complete record does not support any serious scoring. I ask that my record be corrected to prevent any further delay in my points being reflective of minimum security and OUT CUSTODY to which I am entitled to. Upon notification of corrections I reserve the right to be scheduled for an early team review as permitted under BOP policy. I also ask that the PSI be corrected through the removal of the Attempted Murder which is not my conduct or activity.

Respectfully submitted,

Samuel McClellan 22898-001
Samuel McClellan

State disciplinary findings are to be scored unless there is documentation that the state disciplinary proceedings did not afford due process protection to the inmate.

Severity of violence is defined according to the offense behavior which resulted in a **conviction or finding of guilt**. History of Violence points combine both seriousness and recency of prior violent incidents to measure risk for violent behavior, where more points mean greater risk. Therefore, if there is more than one incident of violence, score the combination of seriousness and recency that yields the highest point score. Prior periods * of incarceration will be considered a "history" item if the inmate was **physically** released from custody and then returned to serve either a violation or a new sentence. In determining time frames, use the date of the documented behavior. Documented information from juvenile or YCA adjudication can be used unless the record has been expunged or vacated.

Table 8-5

HISTORY OF VIOLENCE		
POINTS	YEARS	DEFINITION
0	None	No history of violence
1	> 10 Minor	Aggressive or intimidating behavior which is not likely to cause serious bodily harm or death (e.g., simple assault, fights, domestic disputes, etc.) There must be a finding of guilt.
3	5 - 10 Minor	
5	< 5 Minor	
2	> 15 Serious	Aggressive or intimidating behavior which is likely to cause serious bodily harm or death (e.g., aggravated assault, domestic violence, intimidation involving a weapon, incidents involving arson or explosives, rape, etc.). There must be a finding of guilt.
4	10 - 15 Serious	
6	5 - 10 Serious	
7	< 5 Serious	

Example: If an offender was found guilty of homicide 20 years ago and a simple assault 3 years ago, assign 5 points for the simple assault. Or in another case, the offender had guilty findings for homicide 12 years ago; aggravated assault 8 years ago; and fighting 2 years ago, score 6 points for the aggravated assault 8 years ago.

EXHIBIT F

Response to Administrative Remedy Case Number: 333360-F1

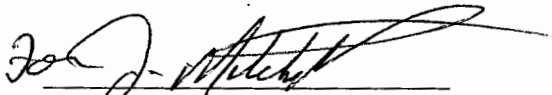
This is in response to your Request for Administrative Remedy dated May 3, 2004. Specifically, you allege that your Custody Classification Form is scored incorrectly. You request that your record be corrected and that you be granted Minimum security with Out custody. In addition, you request that your Pre-Sentence Investigation Report (PSI) be corrected to remove the Attempted Murder arrest listed in your PSI.

Investigation into this matter reveals that your Custody Classification Form was recently updated to correct the Drug/Alcohol Abuse Section. You are now scored as Drug/Alcohol Abuse greater than five years ago. This is based upon your admittance of prior drug use, as indicated in your PSI.

The remainder of your Custody Classification Form is scored correctly. You are being scored with a serious prior and a serious history of violence, based upon your conviction for Assault and Battery in 1994. The Attempted Murder charge, which you refer to, is not being scored on your Custody Classification Form. In addition, the United States Probation Office has written a letter to the Bureau of Prisons indicating that the Attempted Murder charge appearing in your criminal history, is in error.

Your Unit Team will update your Custody Classification Form again at your scheduled team meeting in August 2004.

This response is provided for informational purposes only. If dissatisfied with this response, you may appeal to the Regional Director, Southeast Regional Office, 3800 Camp Creek Parkway, SW, Building 2000, Atlanta, Georgia 30331-6226. Your appeal must be received in the Regional Director's Office within 20 calendar days of the date of this response.


M. Pettiford, Warden

5-28-04
Date

U.S. Department of Justice

Regional Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: MCCLELLAN, SAMUEL L. 22898-001 2B-UPPER FCI YAZOO CITY
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A—REASON FOR APPEAL

Attached hereto, find copy of completed informal resolution with it's response and completed BP-9 with the Warden's response. I am appealing according to policy.

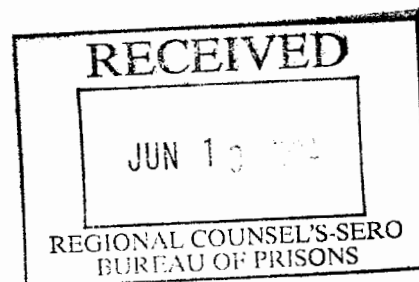
Since one part of my BP-9 complaint was adequately addressed and as indicated on the response, corrected, I am ONLY addressing the incorrect assessment of Staff to score me **SERIOUS (6) POINTS- 5-10 YEARS** under the History of Violence category. Program Statement 5100.07 dictates the procedure for making the correct scoring. First there MUST be a finding of GUILT. But also, the offensive behavior MUST BE "aggressive or intimidating behavior which is likely or not likely to cause serious bodily harm or death. In the matter to which I am appealing, my records adequately reflect that I pled guilty in 1994 to Assault and Battery, therefore according to policy I meet the first requirement, ie., a finding of guilt. However, this same policy CLEARLY indicates that Assault is scored in the MINOR CATAGORY whereas I've been scored in the Serious category. What makes this incorrectly assessing me the higher category is that there is NO documented behavior to indicate conduct which is likely to cause serious bodily harm or death, a requirement for such a scoring.

June 7, 04
 DATE

(See attached page)

Samuel McClellan
 SIGNATURE OF REQUESTER

Part B—RESPONSE



 DATE

 REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 333360-19

Part C—RECEIPT

CASE NUMBER: _____

Return to: _____
 LAST NAME, FIRST, MIDDLE INITIAL

 REG. NO.

 UNIT

 INSTITUTION

SUBJECT: _____

USP LVN

 DATE

Previous editions not usable

 SIGNATURE, RECIPIENT OF REGIONAL APPEAL

BP-230(13)
 APRIL 1982

Attached find copy of page 7, of my PSI showing the conviction for Assault and Battery in 1994. There is NO DETAILS included to make such a determination (See exhibit A, 4 copies attached)

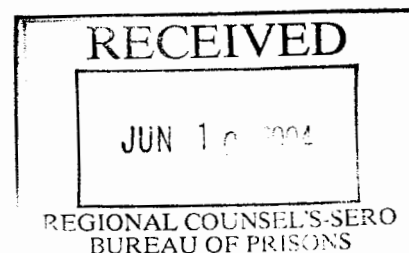
Based on the Bureau's own policy, I am incorrectly scored as a Serious/History of Violence when I should be scored as a MINOR. This incorrect assessment is now and will affect my eligibility for programs to which I otherwise would be able to participate in. Also lesser security classification and approvals. I ask that, in accordance with PS 5100.07 and based on Table 8-5, page 8 of Chapter 8, my assessment incorrectly showing SERIOUS history of violence and (6) points be corrected to show MINOR and (3) points.

Originally, I had also challenged **Prior** determination of Serious, however, I have reviewed the same policy as indicated in Chapter 8, page 5, #4 which shows that I am scored in the Serious category based on my MODERATE SEVERITY scale shown at Appendix B, page 3.. Accordingly, I agree, based on P.S. 5100.07 which dictates a uniform and equally fair system for making a such a determination. I regret that I was in error and included this issue in my original filings.

Accordingly, my incorrect assessment of 6 points for serious history of violence where the offensive behavior is **NOT LIKELY** to cause serious bodily harm warrants correction based on this same policy. I ask that my appeal be granted and correction to my scoring be done to reflect accurate records which are used to determine my Security Classification. Accurate records would therefore indicate 3 points for MINOR 5-10 yrs.

Respectfully submitted,


Samuel McClellan



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ENTERED

JUN 04 2004

FILED
04 JUN -4 AM 10:56
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA)

v.)

CR-01-C-283-S

CV-02-C-9051-19

SAMUEL LEE MCCLELLAN)

ORDER DELETING PARAGRAPH 29 FROM PRESENTENCE REPORT

This defendant was sentenced on March 26, 2002, to serve a term of imprisonment of 120 months. There were no objections offered in regard to the accuracy of the presentence report. On September 13, 2002, the defendant filed a motion pursuant to 28 U.S.C. § 2255 which is pending in this court.

Subsequent to the sentencing hearing and after the defendant began serving his sentence, the Probation Office became aware of incorrect information in the presentence report at paragraph 29. The Probation Office investigated the matter, confirmed that the information was not correct, and informed personnel of the Bureau of Prisons by letter that the information should not be considered in the determination of the terms and conditions of the defendant's incarceration.

On December 26, 2002, the defendant filed a motion to purge that portion of the presentence, claiming that the Bureau of Prisons continued to use that information to adversely affect the terms of his confinement. In response to an order to respond to the motion, the government filed its response on January 9, 2003, in which it concluded that it had confirmed with the Probation Office that the information at paragraph 29 of the presentence report was incorrect in that the arrest for attempted murder was wrongly attributed to this defendant, and further concluded that it had no objection to the expungement of that portion of the presentence report as requested in the defendant's Motion to Expunge. Specifically, also, the government noted that such expungement had no bearing on the merits of the defendant's pending § 2255 motion.

Verification date/time: 07/12/04 12:19pm

Verifying Person: Dawn

Title: Deputy Clerk

Telephone Number: (205) 208-1700

2-015700283 #42

Page 1/2

DRandle

42

On January 17, 2003, the defendant filed a response which included a prayer for immediate relief in regard to the requested expungement of paragraph 29 of the presentence report.

It having been brought to the court's attention that the Bureau of Prisons continues to rely on the information at paragraph 29 to adversely affect the terms and conditions of the defendant's confinement, and the court being satisfied that the information at paragraph 29 was inaccurately included in this defendant's presentence report, it is hereby **ORDERED** that paragraph 29 is expunged from the presentence report and that no decisions regarding the defendant's classification, his participation in BOP programs, or any of ~~his conditions of confinement~~ will be based on consideration of that inaccurate information.

DONE this 31st day of May 2004.



U. W. CLEMON
Chief U.S. District Judge



TRUE COPY:

By: 

EXHIBIT G

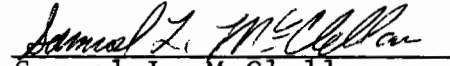
A F F I D A V I T

I, Samuel L. McClellan, Reg. # 22898-001, having been duly sworn, indicate the following statements to be true and correct as I personally know them to be, to wit:


1. Following receipt and verification by Yazoo City staff, BOP employees, of the Courts Order deleting paragraph 29 from the Pre-Sentence Report, dated May 31, 2004 and stamped file June 4, 2004, I provided a copy to ISM(inmate records office)where on 7/12/04 I was provided a verified copy for my possession.
2. On or about August 10, 2004, I spoke to Mrs Scott, CMC, Case Manager Cooridnator, where after her reviewing on mainline, advised that the Serious Violence Scoring would be dropped to MINOR and 1 point, and she would "E-mail" my Case Manager the same.
3. After Mr. Figueroa returned from being away for about a week, I spoke to him and asked had he corrected my scoring as per Mrs Scott, to wit, I was advised that He could not adjust my scoring, that this had to be done by Mrs. Scott.
4. I again spoke to Mrs Scott on or about August 19, 2004 where I conveyed my Case Managers words and gave her another Request to Staff and was advised that she had talked to Mr. Figueroa and my points had been adjusted.
5. On or about August 18, 2004, at my Unit Team review, I was advised by Mr. Figueroa that my point total had been adjusted to 1, with the MINOR Scoring.

6. I was told at my team meeting to give him(Mr. Figueroa) a few days whereby I would be given a copy of my BP-15 showing the corrected adjustment.

Executed this 18 day of November, 2004, under the pains and penalties of perjury.


Samuel L. McClellan

11/18/04
Date


Notary

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 17, 2007
BONDED THRU STEGALL NOTARY SERVICE

Regional Administrative Remedy Appeal No. 333360-R1
Part B - Response

This is in response to your Regional Administrative Remedy Appeal receipted June 10, 2004. You allege your Custody Classification form is scored incorrectly. Specifically, you state you should not be scored with a serious History of Violence. As relief, you request your Custody Classification form be corrected.

Pursuant to Program Statement (PS) 5100.07, Security Designation and Custody Classification Manual, the intent of the custody classification system is to permit staff to use professional judgement within specific guidelines. Points are given on the Custody Classification form for any History of Violence where there are documented findings of guilt.

Our investigation reveals you were arrested and convicted of Assault and Battery on August 5, 1994, and received 32 days custody (2 days served, 30 suspended), 2 years probation and \$406 fine and costs. Although there are no details of the crime, it was scored as a serious History of Violence. You have failed to provide documentation to show that this crime did not involve aggressive or intimidating behavior which was likely to cause serious bodily harm or death. Therefore, you are appropriately scored for serious History of Violence on your Custody Classification form. You have failed to provide evidence to substantiate your allegations of your Custody Classification form being scored incorrectly for History of Violence.

Accordingly, your Regional Administrative Remedy Appeal is denied. If dissatisfied with this response, you may appeal to the Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. Your appeal must be received in the Office of General Counsel within 30 calendar days from the date of this response.

7.6.04
Date


Regional Director, SERO

U.S. Department of Justice

Regional Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: McCELLAN, SAMUEL 22898-001 2B-UPPER FCI YAZOO CITY
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A—REASON FOR APPEAL

Attached hereto, find copy of completed informal resolution with response included, formal complaint, BP-9 with the Wardens' response and BP-10 with the Regional response. I am appealing according to policy and based on PS 5100.07 as the authority on this issue. Please address my concerns:

Since receiving my BP-10 response, I have been able to attain a copy of the Warrant of Arrest regarding the charged conduct, Assault and Battery, on August 5, 1994. I have attached four (4) copies of same to this appeal and address my issue in conjunction with policy outlined in program statement 5100.07, page 8, chapter 8. Table 8-5 which indicates the following:

Aggressive or intimidating behavior which is not likely to cause serious bodily harm or death (e.g., simple assault, fights, domestic disputes, etc.)

Policy permits scoring, based on the charged and **guilty conviction** of same as a **MINOR** point scoring as indicated in the Bureau of Prisons program statement. The scoring of History of Violence gives an example for reference in help to determining the appropriate level or point total needed in assessing the con-

7.31.04

DATE

Samuel McCellan 22898-001

SIGNATURE OF REQUESTER

Part B—RESPONSE

DATE

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: _____

Part C—RECEIPT

CASE NUMBER: _____

Return to: _____
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mrs. Scott. CMC	DATE: August 19, 2004
FROM: Samuel L. McClellan	REGISTER NO.: 22898-001
WORK ASSIGNMENT: Unit Orderly	UNIT: 2B-Upper

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Mrs. Scott:

Previously I spoke to you about information listed in my PSI and subsequently used by the Regional Designators to place me in an Med. level facility, where eventually I was re-classified as a low security level inmate. During this time I've made my Unit Team and the District Court aware that information in my PSI was still being used whereby an ORDER of the Court was sent to the BPP, Yazoo City expunging the inaccurate information. I forwarded you a copy (another attached) and spoke to you on mail line where you advised me that adjustments would also be made to reflect MINOR rather than SERIOUS for a prior charge of assault and battery without threat of violence which would involve death or serious bodily injury

(Do not write below this line)

DISPOSITION:

Signature Staff Member	Date
------------------------	------

Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94



Printed on Recycled Paper

due to the Courts order I provided you on mainline. As you are aware, the Bureau was maintaining a SERIOUS scoring for VIOLENCE (6)points and after speaking to my Case Manager, Mr. Figueroa concerning the E-mail you advised would be sent him, I was told by him "that YOU MUST do this yourself as he could not."

Mrs Scott, I don't understand, if having used this inaccurate information for years now and having "proof" that I never was arrested (plus the expungement), why is it so difficult to up-date and correct my records? Please, address my concerns and correct my scoring!!!

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: AUGUST 13, 2004

FROM: ADMINISTRATIVE REMEDY COORDINATOR
BOP CENTRAL OFFICE

TO : SAMUEL LEE MCCLELLAN, 22898-001
YAZOO CITY FCI UNT: 2U QTR: B16-068L
P.O. BOX 5050
YAZOO CITY, MS 39194

RECEIVED
Warden's Office
AUG 17 2004
FCI Yazoo City

FOR THE REASONS LISTED BELOW, THIS CENTRAL OFFICE APPEAL
IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY
OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 333360-A1 CENTRAL OFFICE APPEAL
DATE RECEIVED : AUGUST 10, 2004
SUBJECT 1 : SECURITY/CUSTODY CLASSIFICATION - EXCEPT PSF APPEALS
SUBJECT 2 :
INCIDENT RPT NO:

REJECT REASON 1: YOU DID NOT SUBMIT YOUR REQUEST OR APPEAL ON THE PROPER
FORM (BP-9, BP-10, BP-11) (CIRCLE ONE)

REJECT REASON 2: YOU MAY RESUBMIT YOUR APPEAL IN PROPER FORM WITHIN
15 DAYS OF THE DATE OF THIS REJECTION NOTICE.

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-DIR-9 and BP-DIR-10, including any attachments must be submitted with this appeal.

From: McCELLAN, SAMUEL L.	22898-001	2B-UPPER	FCI YAZOO CITY
LAST NAME, FIRST, MIDDLE INITIAL	REG. NO.	UNIT	INSTITUTION

Part A—REASON FOR APPEAL

Attached hereto, find copy of completed informal resolution with response included; formal complaint, BP-9 with the Warden's response; and BP-10 with the Regional response. I am appealing according to policy and based on PS 5100.07, the authority on this issue. Please address my concerns:

Since receiving my BP-10 response, I have been able to attain a copy of the actual Warrant of Arrest regarding the charged conduct, Assault & Battery, dated Aug. 5, 1994. I have attached four (4) copies of same to this appeal & address my issue in conjunction with policy outlined in program statement 5100.07, page 8, Chapter 8. Table 8-5 indicates the following:

"Aggressive or intimidating behavior which **is not** likely to cause serious bodily harm or death (e.g., simple assault, fights, domestic disputes, etc)"

Policy permits scoring, based on the charged and **guilty conviction** of same as a **MINOR** point scoring as indicated in the Bureau of Prisons program statement. The scoring of History of Violence gives an example for reference in helping to determine the appropriate level or point total needed in assessing the con-

(See Attached back page)

08-24-04
DATE

Samuel McCellan
SIGNATURE OF REQUESTER

Part B—RESPONSE

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: _____

Part C—RECEIPT

CASE NUMBER: _____

Return to: _____

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT: _____

DATE



Printed on Recycled Paper

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL

conduct where a **finding of guilt** has been established. It gives the following example:

Example (1): If an inmate has a conviction resulting in a fine for being in a drunken fight 12 years ago, this would be scored as **> 10 Minor**, and "1" would be entered

The attached charged conduct, to which I pled guilty accordingly, indicates **NO behavior which is likely to cause serious bodily harm or death, in any way.** The Warrant of Arrest which gives the brief details of the conduct, in NO WAY possible could have resulted in serious bodily harm or death. Moreso, it's basically the same conduct given as an example above which shows a MINOR scoring. Any fight involves "fists and contact" yet it's scored as MINOR where there is no likelihood of serious bodily harm or death. Accordingly, I respectfully request my point scoring be adjusted with regards to History of Violence, from Serious to Minor.

At the time of originally being designated and scored, information incorrectly stated in my PSI had some influence over my being designated to FCI Memphis, a medium security facility and further in scoring me with **SERIOUS**, in the History of Violence category. That information I speak involved a listed **ATTEMPTED MURDER** in which I had no knowledge or ever was arrested for. I have attached four (4) copies of the District Judges **ORDER** deleting the inaccurate information from my PSI and in so doing I believe had this mis-information not been included, my History of Violence would have been scored appropriately as a Minor scoring.

I appreciate your fairness and prompt attention to addressing the error in my scoring as it unfairly hinders me in participating in lesser security designation, to wit I should be eligible.

Respectfully,

Samuel L. McClellan 22898-001
Samuel L. McClellan

D E C L A R A T I O N

I, Samuel L. McClellan, Reg. # 22898-001, do declare all statements and accounts to be true and correct under penalty of perjury, to wit:

1. Following receipt of the Courts Order in Expungement, and thereafter, the conversation with the CMC where I was advised my Case Manager would be e-mailed to correct my scoring, I spoke to Mr. Figueroa, in his office concerning the CMC's instructions, requesting correct copy.
2. At the time of our discussion, I had in hand a copy of the Courts Expungement Order, stamped verified by Yazoo City Staff where I showed it to Mr. Figueroa who looked at it and said, "Ok, keep it and bring it with you to team", returning it to me, after reading it.
3. I again asked my Case Manager for a corrected copy of my scoring, from SERIOUS to MINOR for violence, as the CMC advised she would e-mail him to correct and was told that "he could not do this, correct the scoring, that the CMC would have to do this herself".
4. Following these steps being taken, I went back and wrote the CMC again, Aug. 19, 2004, and spoke to her also.

I declare that the statements contained herein are true and correct, under penalty of perjury. Executed this 19 day of November 2004.


Samuel L. McClellan

EXHIBIT I

RECEIPT - ADMINISTRATIVE REMEDY

DATE: OCTOBER 19, 2004

FROM: ADMINISTRATIVE REMEDY COORDINATOR
BOP CENTRAL OFFICE

TO : SAMUEL LEE MCCLELLAN, 22898-001
YAZOO CITY FCI UNT: 2U QTR: B16-069L

THIS ACKNOWLEDGES THE RECEIPT OF THE CENTRAL OFFICE APPEAL
IDENTIFIED BELOW:

REMEDY ID : 333360-A2
DATE RECEIVED : AUGUST 31, 2004
RESPONSE DUE : OCTOBER 10, 2004
SUBJECT 1 : SECURITY/CUSTODY CLASSIFICATION - EXCEPT PSF APPEALS
SUBJECT 2 :
INCIDENT RPT NO:

EMS-409.051

REQUEST FOR TRANSFER/APPLICATION OF MANAGEMENT VARIABLE

CDFRM AUG 99

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

From: Constance Reese, Warden	Facility: FCI Yazoo City, Mississippi	Date: 9/2/04
Inmate's Name: McClellan, Samuel Lee	Register Number: 22898-001	
To: R. E. Holt, Regional Director	Attn: Kathy P. Lane, Regional Designator	

☒ Transfer to: Any Appropriate Camp, Southeast Region, Code 308, Institution Classification☐ Apply Management Variable(s): _____☐ Update Management Variable Expiration Date. (New Date): _____

1. Inmate's Medical Status:

Mr. McClellan is currently assigned to regular duty status with medical restrictions of no sports/no weight lifting and soft shoes only.

2. Institution Adjustment (Include a brief description of the inmate's adjustment during this period of incarceration with emphasis on recent adjustment)

Mr. McClellan's overall institutional adjustment has been good and his interaction with staff is appropriate. He works as an Orderly in the 2B Upper Unit and receives good work reports. Mr. McClellan is a dependable worker who requires minimum supervision.

DISCIPLINARY RECORD

3. Mr. McClellan has not received any Incident Reports.

4. Rationale for Referral: (For Mariel Cuban Detainees, include availability of community resources and status of INS review process in this section.)

Mr. McClellan arrived at FCI Yazoo City on March 17, 2003. His projected release date is January 30, 2011, via Good Conduct Time Release. Mr. McClellan is a Minimum security level inmate with Out custody. He has requested a transfer to any appropriate camp, to be closer to his release residence and receive family visitations. Mr. McClellan is from Birmingham, Alabama. While at FCI Yazoo City, Mr. McClellan has followed the recommendations of his Unit Team. He regularly receives good work reports and is identified as being a hard worker who needs little supervision. Based upon this information, his Unit Team believes Mr. McClellan can function at a lesser security level institution, and is requesting a transfer to any appropriate Camp, as this will assist in his future transitional needs.

5a. Parole Hearing Scheduled: ☐ Yes ☒ No

b. If yes, when _____

6. Note any past or present behavior and/or management/inmate concerns.

Mr. McClellan is not considered a management problem. His Security Designation Data Form reflects 5-10 years serious violence. However, at this time, the violence has exceeded the 10 year period. Therefore, his Custody Classification Form is scored with 10-15 years serious. Mr. McClellan's Pre-Sentence Investigation Report indicates that he was charged with Attempted Murder in Birmingham, Alabama, in 1992. However, a letter from Cynthia McGough, Deputy Chief U.S. Probation Officer, Northern District of Alabama, indicates this case appeared to be mistaken identity, and the charges against Mr. McClellan were dismissed.

Staff have checked the following SENTRY Programs to ensure that they are correct and current:

Inmate Profile	CIM Clearance and Separatee Data
Inmate Load Data	Custody Classification Form
Sentence Computation	Chronological Disciplinary Record

Prepared by: M. Figueroa, Case Manager

Unit Manager Signature: R. Fulcher

YAZB7 *
PAGE 001 OF 001

CLEARANCE DATA

* 09-16-2004
11:47:34

REGISTER NO...: 22898-001

NAME.....: MCCLELLAN

SAMUEL

LEE

RSP OF.....: YAZ-YAZOO CITY FCI

02 REMARKS: 4/18/02 CO/DPM: RTN TO SERO FOR INITIAL DESIG.

02 REMARKS: 4-18-02,SER/KSB DESIG TO MEM

02 REMARKS: 2/21/03 MXR/FGC APV 308 TRF FM MEM TO YAZ.

02 REMARKS: 9/10/04,SER/NWS DENY TRF;FPC INAPP;CRIM HST/TIME REMAINING

G0005

TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

SAMUEL LEE MCCLELLAN, 22898-001
YAZOO CITY FCI UNT: 2U QTR: B16-069L
P.O. BOX 5050
YAZOO CITY, MS 39194

Shed 10-15-04
10-15-04

Administrative Remedy No. 333360-A2
Part B - Response

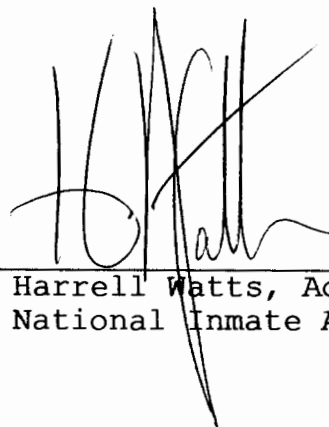
You appealed the Warden's response to your Request for Administrative Remedy in which you challenged the scoring of the "history of violence" category on your Custody Classification Form.

Our review of your record reflects the Custody Classification Form updated September 23, 2004, indicates your "history of violence" was reduced from "greatest" to "minor" (more than 10 years ago) and for which you have been assessed one point.

This response is provided for informational purposes only.

October 8, 2004

Date

A handwritten signature in black ink, appearing to read "Harrell Watts", written over a horizontal line.

Harrell Watts, Administrator
National Inmate Appeals

EXHIBIT J

YAZB7
PAGE 001

PROGRAM REVIEW REPORT

08-17-2004
14:52:15

INSTITUTION: YAZ YAZOO CITY FCI

NAME.....: MCCLELLAN, SAMUEL LEE
RESIDENCE...: BIRMINGHAM, AL 35217

REG. NO: 22898-001

TYPE OF REVIEW.....: INITIAL CLASSIFICATION PROGRAM REVIEW
NEXT REVIEW DATE.....: 02-14-05PROJ. RELEASE DATE...: 01-30-2011
PAROLE HEARING DATE...: NONERELEASE METHOD...: GCT REL
HEARING TYPE....: NONEDATE OF NEXT CUSTODY REVIEW: 08/05 DETAINERS (Y/N): (N)CIM STATUS (Y/N).....: (N) IF YES, RECONCILED (Y/N): N/APENDING CHARGES.....: NONE KNOWNOFFENDER IS SUBJECT TO NOTIFICATION UNDER 18 U.S.C. 4042(B) (Y).....: YES
IF YES - CIRCLE ONE - DRUG TRAFFICKING/CURRENT VIOLENCE/PAST VIOLENCE

CATEGORY	CURRENT ASSIGNMENT	EFF DATE	TIME
CMA	PROG RPT	NEXT PROGRESS REPORT DUE DATE	04-29-2005 1539
CMA	RPP NEEDS	RELEASE PREP PGM NEEDS	07-13-2002 1342
CMA	V94 CDA913	V94 CURR DRG TRAF ON/AFT 91394	05-15-2002 1253
CUS	OUT	OUT CUSTODY	08-17-2004 1435
DRG	DRG I NONE	NO DRUG INTERVIEW REQUIRED	05-12-2002 1232
DRG	ED WAIT V	DRUG EDUCATION WAIT-VOLUNTEER	06-04-2002 1231
EDI	ESL HAS	ENGLISH PROFICIENT	05-13-2002 1347
EDI	GED HAS	COMPLETED GED OR HS DIPLOMA	10-30-2002 0706
FRP	COMPLT	FINANC RESP-COMPLETED	06-01-2004 1358
LEV	MINIMUM	SECURITY CLASSIFICAT'N MINIMUM	07-06-2004 1508
MDS	ATH RESTR	NO SPORTS/NO WEIGHT LIFTING	02-28-2003 1507
MDS	REG DUTY	NO MEDICAL RESTR--REGULAR DUTY	05-01-2002 1500
MDS	SOFT SHOES	SOFT SHOES ONLY	05-06-2002 1500
MDS	YES F/S	CLEARED FOR FOOD SERVICE	05-08-2002 0843
QTR	B16-068L	HOUSE B/RANGE 16/BED 068L	05-20-2004 0941
RLG	PROTESTANT	PROTESTANT	03-27-2003 1512
WRK	UNTORD-2BU	UNITS: UNIT ORDERLY - 2BU	05-29-2003 0956

WORK PERFORMANCE RATING: Inmate received good work reports.INCIDENT REPORTS SINCE LAST PROGRAM REVIEW: Inmate has received no Incident Reports.FRP PLAN/PROGRESS: Inmate has completed his FRP obligation.RELEASE PREPARATION PARTICIPATION: NONE AT THIS TIME.Inmate has taken several RPP classes voluntarily.

YAZB7
PAGE 002

PROGRAM REVIEW REPORT

08-17-2004
14:52:15

CCC RECOMMENDATION: NONE AT THIS TIME.

PROGRESS MADE SINCE LAST REVIEW: INMATE COMPLETED CURRENT EVENTS CLASS, FRP OBLIGATION, CLEAR CONDUCT, HIGH SANITATION, ENROLL IN BUSINESS CLASS

GOALS FOR NEXT PROGRAM REVIEW MEETING: UNIT TEAM RECOMMENDS:

- 1-DISPLAY HIGH SANITATION BY 2-14-05
- 2-MAINTAIN CLEAR CONDUCT BY 2-14-05
- 3-CONTINUE HEALTH MAINTENANCE BY 2-14-05

LONG TERM GOALS:

COMPLETE WELLNESS PROGRAM BY AUGUST 2009.

OTHER INMATE REQUESTS/TEAM ACTIONS:

407/408 REVIEWED.
INMATE REQUESTS LESSER SECURITY TRANSFER TO FCI TALLADEGA, AL OR FPC MONTGOMERY, AL.
UNIT TEAM EVALUATED AND SUBMITTED REQUEST.

YAZB7 *
PAGE 003 OF 003

PROGRAM REVIEW REPORT

* 08-17-2004
14:52:15

SIGNATURES:

UNIT MANAGER: *R. Stanley*
DATE: 8-19-04

INMATE: *Samuel McClellan*
DATE: 8-19-04

YAZB7 606.00 * MALE CUSTODY CLASSIFICATION FORM * 08-31-2004
 PAGE 001 OF 001 14:48:17

(A) IDENTIFYING DATA

REG NO.: 22898-001 FORM DATE: 08-24-2004 ORG: YAZ
 NAME: MCCLELLAN, SAMUEL LEE CR HX PT: 3

MGTV: NONE

PUB SFTY: NONE

MVED:

(B) BASE SCORING

DETAINER: (0) NONE SEVERITY: (3) MODERATE
 MOS REL.: 77 PRIOR: (3) SERIOUS
 ESCAPES: (0) NONE VIOLENCE: (1) > 10 YRS MINOR
 PRECOMMT: (3) VOL SURR

(C) CUSTODY SCORING

TIME SERVED: (3) 0-25% DRUG/ALC ABUSE: (3) > 5 YRS
 MENTAL STABILITY: (4) FAVORABLE TYPE DISCIP RPT: (5) NONE
 FREQ DISCIP RPT: (3) NONE RESPONSIBILITY: (4) GOOD
 FAMILY/COMMUN: (4) GOOD

--- LEVEL AND CUSTODY SUMMARY ---

BASE CUST	VARIANCE	SEC TOTAL	SCORED	LEV MGMT	SEC LEVEL	CUSTODY	CONSIDER
+4	+26	-3	+1	MINIMUM	N/A	OUT	DECREASE

G5149 INMATE/DESIG FACL LEVEL MISMATCHED, HAVE REGION ADD A MGTV
 G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

EXHIBIT K

D E C L A R A T I O N

I, William E. Pollack, Reg. #87311-020, do declare the statements contained herein to be true and fact as I know them to be, to wit:

1. Following conviction in US District Court, I was originally designated to FCI Estill, SCP, South Carolina, a minimum security facility or Camp.
2. Bureau of Prisons employees reviewed my criminal record and, based on charges that were dismissed, but listed in my PSI, determined I was inappropriate for Camp placement.
3. I was re-designated to FCI Yazoo City, MS., a low level security facility, where I proceeded with grievances as established under the administrative remedy procedure.
4. In response #313674-F1, the Warden indicated that my Criminal History indicated violent behavior from 1996 up to my current offense, however this is based on Bureau of Prisons policy of treating "arrest" without conviction as Criminal History, as proven by the attached response to Remedy Id #313673-F1 and # 330346-F1.
5. My only convictions in my life involved a drug charge, which had nothing to do with violence, a misdemeanor marijuana conviction and the drug charge I am present on.

Executed this 18 day of November 2004, under the pains afforded for perjury.

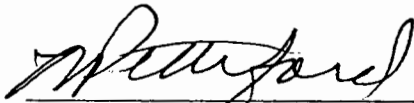

William Earl Pollack

Response to Administrative Remedy: 313674-F1

This is in response to your Request for Administrative Remedy dated October 6, 2003. You allege that you are being improperly held at the Federal Correctional Institution in Yazoo City, Mississippi. You request a transfer to FPC Eglin, Florida, or Miami, Florida.

Investigation of this matter reveals that you were originally designated to the camp at FCI Estill, South Carolina. However, you were deemed inappropriate for a camp environment, due to your propensity towards violence. Specifically, your criminal history noted in your Pre-Sentence Investigation Report indicates violent behavior from 1996, until your arrest for your current offense. As a result, you were subsequently transferred to FCI Yazoo City, Mississippi.

Based on our findings, your Request for Administrative Remedy is **DENIED**. If dissatisfied with this response, you may appeal to the Regional Director, Southeast Regional Office, 3800 Camp Creek Parkway, SW, Building 2000, Atlanta, Georgia 30331-6226. Your appeal must be received in the Regional Director's Office within 20 calendar days of the date of this response.



M. Pettiford, Warden

10/27/03

Date

Response to Administrative Remedy Case Number: 330346-F2

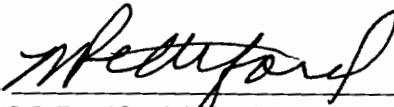
This is in response to your Request for Administrative Remedy dated April 5, 2004. You allege that your constitutional rights were violated when you were denied Camp placement due to a history of violence, even though you have no convictions involving violence. You request that all false allegations be stricken from your record and that you be transferred immediately.

Investigation of this matter reveals that you arrived at FCI Estill, SCP, South Carolina, on January 29, 2003, as an initial designation. Upon your arrival, concerns were raised regarding your appropriateness for Camp placement due to your arrest history of Battery, Aggravated Battery, Aggravated Battery on a Pregnant Female, and Assault. The fact that you were not convicted due to acquittal, no action, or dismissal; still presents a pattern of violent behavior. P.S. 5100.07, *Security Designation and Custody Classification Manual*, states:

“It should be clearly understood that the Custody Classification Form only recommends an inmate’s custody. The Unit Team and/or Warden is the final reviewing authority. The intent of the Custody Classification system is to use professional judgement within specific guidelines.”

The Bureau of Prisons does not believe you are appropriate for placement into a Minimum security facility due to your arrest history for violent offenses.

Based on our findings, your Request for Administrative Remedy is **DENIED**. If dissatisfied with this response, you may appeal to the Regional Director, Southeast Regional Office, 3800 Camp Creek Parkway, SW, Building 2000, Atlanta, Georgia 30331-6226. Your appeal must be received in the Regional Director’s Office within 20 calendar days of the date of this response.


M. Pettiford, Warden

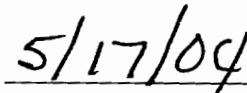

Date

EXHIBIT L

D E C L A R A T I O N

I, Franc Barriera-Diaz, Reg. # 38552-004, do execute and declare that the statements contain herein are true and correct as I personally know them to be, to wit:

1. That on November 15, 2004, I was advised that I was approved by the Southeast Regional Office following recommendation by my 2B-Upper Unit Team for Out Custody, Camp placement.
2. That my time remaining on my present confinement is projected to be in February 2011, approximately 6 years.

Executed this 16 day of November, 2004 and declare to be true under penalty of perjury.


Franc Barriera-Diaz

A F F I D A V I T

I, L B Smith, Reg. #06611-043, having been duly sworn make the following statements based on my knowledge and belief that they are true and correct, to wit:

1. Following convictions in U.S. District Court, I was sentenced to serve 151 months within the Bureau of Prisons whereby I was designated to FCI Yazoo City, MS on or about November 2002.
2. Approximately one year later, based on Bureau of Prisons policy as I know it, ie., less than 10 years or 120 months, I was approved for Out custody, Camp placement by the Southeast Regional Office with slightly less than "120 months" remaining on my committment.
3. Thereafter, on or about November of 2003, I was transfered from Unit 2B-Upper in Yazoo City, MS., through an unescorted furlough by bus to FPC Eglin, Florida.

EXECUTED this 16 day of November, 2004 under my oath and and under the pains and penalties afforded for perjury.

L.B. Smith
L B Smith

11/16/04
Date

me
Notary

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 17, 2007
BONDED THRU STEGALL NOTARY SERVICE

187
November 20, 2004

NOV 20 PM 2:55

CV-04-PWG-3342-S

Office of the Clerk
United States District Court
Northern District of Alabama
Hugo L. Black United States Courthouse
1729 5th Avenue North
Birmingham, Alabama 35203-2040

RE: Complaint under the Privacy Act
5 U.S.C. § 552 es quir

Dear Clerk:

Enclosed please find and file Plaintiff's Complaint under provisions of the Privacy Act, § 552 es quir. I have included an extra copy for service on counsel or Defendant, the Bureau of Prisons. I appreciate your attention to this matter.

Prior to my mailing out this complaint, I made request for view of my Central File, maintained by the Bureau of Prisons, which is attached to this letter. A copy of same was placed, after viewing, showing signature of myself and Case Manager Mr. Figueroa. My intentions were to verify "again" that the documents I've listed as exhibits, including but not limited to, Court's Expungement; Governments Response; Deputy Chief U.S. Probation Officer, were in fact a part of my records being kept by Defendant in this action. I so verified same.

In filing this action, I feel relief after years of being victimized from someones mistake, that no matter how much I tried, no matter how much others tried, no matter all the steps in the administrative remedies, NOTHING changed as to correcting my records and the decision that adversely affected me, then and presently. I would hope that my inexperience in legal matters would be taken into consideration and if justice requires, an professional attorney be provided to insure fairness and truth is the product of these proceedings.

Lastly, if the Court is willing, I respectfully ask that this case and the opinion of the Court be considered for publication.

Sincerely,

Samuel L. McClellan
Samuel L. McClellan

CC: slm